

CMC

✓
C Hc

JURY INSTRUCTIONS GIVEN

11c 6142

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. I will also give each of you a copy of these instructions to use in the jury room. You must follow all of my instructions about the law, even if you disagree with them. This includes the instructions I gave you before the trial, any instructions I gave you during the trial, and the instructions I am giving you now.

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you saw and heard here in court. This is your job, not my job or anyone else's job.

Your second duty is to apply the law I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you.

You must not take anything I said or did during the trial as indicating that I have an opinion about the evidence or about what I think your verdict should be.

FILED

AUG 10 2015

AUG 10 2015

CMC

Judge Thomas M. Durkin
United States District Court

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the Internet, or any other source.

The evidence includes only what the witnesses said when they are testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers agree to. A stipulation is an agreement that certain facts are true or that a witness would have given certain testimony.

During the trial, certain testimony was presented to you by the reading of depositions and by video. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

A lawyer has a duty to object if he or she thinks a question is improper. If I sustained objections to questions the lawyers asked, you must not speculate on what the answers might have been.

If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

Do not make any decisions simply by counting the number of witnesses who testify about a certain point.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

What is important is how truthful and accurate the witnesses were and how much weight you think their testimony deserves.

Part of your job as jurors is to decide how believable each witness was, and how much weight to give each witness' testimony. You may accept all of what a witness says, or part of it, or none of it.

Some factors you may consider include:

- the intelligence of the witness;
- the witness' ability and opportunity to see, hear, or know the things the witness is testifying about;
- the witness' memory;
- the witness' demeanor;
- whether the witness has any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness and accuracy of the witness' testimony in light of the other evidence presented; and
- inconsistent statements or conduct by the witness.

It is proper for an attorney to interview any witness in preparation for trial.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. You may consider an inconsistent statement made before the trial to help you decide how believable a witness's testimony was here in court. If an earlier statement was made under oath, then you can also consider the earlier statement as evidence of the truth of whatever the witness said in the earlier statement.

You have heard witnesses, namely, Dr. Pedelty, Dr. Filkins, Dr. Blum, and Dr. Evans, who gave opinions and testimony about subjects requiring special knowledge or skill. You do not have to accept these witnesses' opinions and testimony. You should judge these witnesses' opinions and testimony the same way you judge the testimony of any other witness. In deciding how much weight to give to these opinions and testimony, you should consider the witnesses' qualifications, how they reached their opinions, and the factors I have described for determining the believability of testimony.

Certain summaries, charts, diagrams, and other demonstrative exhibits were shown to you to help explain other evidence that was admitted. These summaries, charts, diagrams, and other demonstrative exhibits are not themselves evidence or proof of any facts.

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

The Plaintiff, Elizabeth Awalt, is Robert Awalt's widow and brings this action in a representative capacity because she is the Administrator of the Estate of Robert Awalt, who is deceased. Robert Awalt may be referred to as the "decedent."

Correctional Healthcare Companies, Inc., and Health Professionals, Ltd, entered a contract to provide medical services to the detainees at the Grundy County Jail. As a result of that contract, the United States Constitution imposes upon Correctional Healthcare Companies, Inc., Health Professionals, Ltd, and their employees, including Dr. Cullinan, the duty to provide adequate medical treatment to the detainees at the Grundy County Jail.

There will be two separate stages to this trial. You will consider the evidence and render a verdict in each of those stages.

In the first stage of the case, you have now heard the evidence in support of the Plaintiff's claims against Defendant Stephen Cullinan. You will now deliberate and render a first verdict.

In the second stage of the case, you will hear the evidence in support of the Plaintiff's claims against Correctional Healthcare Companies, Incorporated, and Health Professionals, Limited. After you hear that evidence, you will again deliberate and render a second verdict.

In the first stage of the case, Plaintiff claims that Defendant Cullinan failed to provide care to Robert Awalt, in violation of Mr. Awalt's rights protected by the Fourteenth Amendment to the United States Constitution. To succeed on her Fourteenth Amendment claim, Plaintiff must show that Defendant Cullinan was deliberately indifferent in denying Mr. Awalt care.

To succeed on her claim that Defendant Cullinan failed to provide medical attention to Robert Awalt, in violation of the Fourteenth Amendment to the United States Constitution, Plaintiff must prove each of the following things by a preponderance of the evidence:

1. Robert Awalt had a serious medical need;
2. Defendant Cullinan was deliberately indifferent to Robert Awalt's serious medical need;
3. Defendant Cullinan's conduct caused harm to Robert Awalt.

If you find that Plaintiff has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff has failed to prove any one of these things by a preponderance of the evidence, then you should find for Defendant, and you will not consider the question of damages.

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

When I use the term “serious medical need,” I mean a condition that a doctor says requires treatment, or something so obvious that even someone who is not a doctor would recognize it as requiring treatment. In deciding whether a medical need is serious, you should consider the following factors:

- the severity of the condition;
- the harm including pain and suffering that could result from a lack of medical care;
- whether providing treatment was feasible; and
- the actual harm caused by the lack of medical care.

When I use the term “deliberately indifferent,” I mean that Defendant Cullinan actually knew of a substantial risk of serious harm to Robert Awalt’s health or safety, and that Defendant Cullinan consciously disregarded that risk by failing to take reasonable measures to deal with it.

If Defendant Cullinan took reasonable measures to respond to a risk, then he was not deliberately indifferent, even if Plaintiff was ultimately harmed.

Plaintiff must prove by a preponderance of the evidence that Dr. Cullinan was personally involved in the conduct that Plaintiff complains about. You may not hold Dr. Cullinan liable for what others did or did not do.

If you find that Plaintiff has proved any of her claims against Defendant Cullinan, then you must determine what amount of damages, if any, Plaintiff is entitled to recover.

If you find that Plaintiff has failed to prove all of her claims, then you will not consider the question of damages.

If you find in favor of Plaintiff on one or more of her claims, then you must determine the amount of money that will fairly compensate Plaintiff for any injury sustained by Robert Awalt as a result of Defendant Cullinan's wrongful conduct. These are called "compensatory damages".

Plaintiff must prove compensatory damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money, for they include both the physical and emotional aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages:

1. Robert Awalt's loss of his life;
2. The physical pain and suffering that Robert Awalt experienced prior to the time of his death;
3. The emotional pain and suffering that Robert Awalt suffered prior to his death;

No evidence of the dollar value of physical or emotional pain and suffering has been or needs be introduced. There is no exact standard for setting the damages to be awarded on account of such losses. You are to determine an amount that will fairly compensate the Estate of Robert Awalt for any injuries that Robert Awalt sustained.

If you find for Plaintiff, you may, but are not required to, assess punitive damages against Defendant Cullinan. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to the defendant and others not to engage in similar conduct in the future.

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against Defendant Cullinan. You may assess punitive damages only if you find that his conduct was malicious or in reckless disregard of Robert Awalt's rights. Conduct is malicious if it was accompanied by ill will or spite, or was done for the purpose of injuring Robert Awalt. Conduct is in reckless disregard of Robert Awalt's rights if, under the circumstances, it reflects complete indifference to Robert Awalt's safety or rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Defendant Cullinan's conduct;
- the impact of Defendant Cullinan's conduct on Robert Awalt;
- the relationship between Robert Awalt and Defendant Cullinan;
- the likelihood that Defendant Cullinan would repeat the conduct if an award of punitive damages is not made;
- Defendant Cullinan's financial condition;
- the relationship of any award of punitive damages to the amount of actual harm that Robert Awalt suffered.

You may not consider Dr. Cullinan's financial condition when determining whether Plaintiff has met her burden in proving liability against him. Further, should you find for Plaintiff on the issue of liability, you may not consider Dr. Cullinan's financial condition in your assessment of compensatory damages.

Defendant Cullinan's financial condition is only relevant if you decide punitive damages are appropriate.

Once you are all in the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as telephone, cell phone, smart phone, iPhone, Blackberry, computer, text messaging, instant messaging, the Internet, chat rooms, blogs, websites, or services like Facebook, MySpace, LinkedIn, YouTube, Twitter, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the Marshal. The note should be signed by the foreperson, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 6-6, or 8-4, or whatever your vote happens to be.

A verdict form has been prepared for you. You will take this form with you to the jury room.

When you have reached unanimous agreement, your foreperson will fill in, date, and sign the verdict form. Each of you will then sign it.

Advise the Marshal once you have reached a verdict. When you come back to the courtroom, I will read the verdict aloud.

The verdict must represent the considered judgment of each juror. Your verdict, whether it is for the Plaintiff or the Defendant, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with each other, express your own views, and listen to your fellow jurors' opinions. Discuss your differences with an open mind. Do not hesitate to re-examine your own view and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence just because of the opinions of your fellow jurors or just so that there can be a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror.

You are impartial judges of the facts.